

PRIVILEGES CHEAT SHEET

Privilege	Asserted By	Rule	Exceptions
Attorney/Client	Assertion by the client is presumed	<p><u>FRE 502</u></p> <p>Confidential communications between attorney and client are not subject to disclosure without the informed consent of the client.</p> <p>See also your state bar professional obligations</p>	Some limited exceptions in some jurisdictions for planned murder or mayhem. See your state bar code of professional conduct.
Attorney Work Product	Asserted by the attorney (in the best interest of and in light of duty of loyalty to the client)	<p><u>FRE 502</u></p> <p>Tangible materials or their intangible equivalent prepared in anticipation of litigation or trial.</p> <p>Includes attorney conclusions, impressions etc...</p> <p>See also your state bar professional obligations</p>	Limited waiver described in FRE 502.
Spousal (Testimonial)	Testifying Spouse	<p>The spousal testimonial privilege is an evidentiary privilege that protects a defendant's spouse from having to take the witness stand to testify against the defendant. <i>See United States v. Breton</i>, 740 F.3d 1, 9-10 (1st Cir. 2014). It has deep and "ancient roots" in the history of the common law, and descends "from two canons of medieval jurisprudence." <i>Trammel v. United States</i>, 445 U.S. 40, 43-44, 100 S.Ct. 906, 63 L.Ed.2d 186 (1980).</p>	

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Spousal (Communication)	Either Spouse	<p>"[c]ommunications between the spouses, privately made, are generally assumed to have been intended to be confidential, and hence they are privileged . . ." The privilege (1) extends to words and acts intended to be a communication; (2) requires a valid marriage; and (3) applies only to confidential communications, i.e., those not made in the presence of, or likely to be overheard by, third parties. Recognizing that the privilege obstructs the truthseeking process, courts have construed it narrowly, particularly in criminal proceedings, because of society's strong interest in the administration of justice. The government bears the burden of showing that the communication was not intended to be confidential.</p>	Federal law recognizes exceptions "where one spouse is charged with a crime or tort against the person or property of the other or against a child" of either.
Confessional Privilege	The Communicant, <u>not</u> The Priest.	Protects the disclosure of communications between clergy and communicants	
Accountant/Client Privilege	Client	Accountant Client Privilege is the protection afforded to a client from an accountant's unauthorized disclosure of materials submitted to or prepared by the accountant.	The privilege generally does not apply in case of an administrative summons by the Internal Revenue Service under 26 U.S.C. § 7602, in the case of a summons under the Securities Exchange Act of 1934, or in the case of a court order.